Q You will agree with me if the winch is let go, the winch is let go, okay, then there is going to be relative movement of the door relative to the safety chain, correct?
A If the winch is let go, the door is going to drop into the sea and keep on going until the winch is stopped. It's not going to move a short amount and stop by itself.
Q You are talking about on those Marco winches?
A On any winch.
Q When you say "let go," how do you define that?
A I'm just trying to -- Maybe I should ask you to define what you mean by "let go."
Q I didn't define it. Describe how that Marco winch on the MY WAY works.
A It's a hydraulic winch with a hydraulic clutch. When the clutch or the operating mechanism is engaged, the winch drum turns and lifts the load, lifts the wire, spools up the wire. When the winch is stopped or put in neutral, there is a brake that is set to prevent the load if it's still on the winch from free spooling, so the brake is set as the stop. And if you want to let the load go and let it drop into the sea to set the doors out again, you

disengage the brake and it can free spool.
Q Is it your testimony that when you -- There is a control -- You have been on the MY WAY, correct?
A Yes.
Q And there is a hydraulic control on the MY WAY, correct?
A Yes.
Q It's mounted on the winch itself?
A Yes.
Q That hydraulic control has three positions, correct?
A Yes.
Q It is spring loaded?
A Yes.
Q You let go of it and it goes back to neutral?
A Yes.
Q When the hydraulic system is engaged, the hydraulic pumps are running providing power to the winch on the MY WAY and there is a load on the winch, okay, and the control is placed to the neutral position, will the winch free spool on the MY WAY?
A If it's in neutral and disengaged, if the clutch is disengaged, the winch will free spool if the brake is not set.
Q Is the clutch a separate control?

A I'm not sure if on the MY WAY it's a separate control, but in order for the winch to free spool, the clutch has to be disengaged, clutching mechanism.
MR. ANDERSON: Can you draw the winch controls on the MY WAY. The little scribble drawing that we talked about before, why don't we just mark the scribble as --
MR. REGAN: I think it's 8. I want to say for the record --
MR. ANDERSON: Some is my writing and some is his writing. I just wanted to mark it.
[Exhibit 8 marked for identification]
[Exhibit 9 marked for identification]
Q I'll give you a pad of paper and mark with my red pen as Exhibit 9, can you outline how the controls work. I'll give you a blue pen.
A What I will agree to do is give you a basic schematic of a hydraulic winch similar to this as long as you understand it's not a detailed schematic or the exact mechanism on this vessel because I have not for the purposes of this looked into the design of the hydraulic system of the MY WAY. But generally I'll give you a basic hydraulic winch and

hydraulic system drawing.
Q Do you know how the winch controls on the MY WAY work?
A Yes. I know if the winch is in neutral and the clutch is disengaged, the brake has to be set to prevent the load from free spooling. If the winch is engaged, the clutch is engaged, you can go forward or backward on the clutch using the hydraulic.
Q Do you know if there is a clutch control on the winch on the MY WAY?
A There is a clutch on every hydraulic winch.
Q Is the clutch control on the winch on the FISHING VESSEL MY WAY manually engaged or automatically engaged?
A I don't recall and I don't know specifically. I believe it's part of the operating control on the winch itself, but I'm not sure.
Q You have been on the MY WAY, correct?
A Yes.
Q And you have observed the winch, correct?
A I have not observed this winch operating on the MY WAY.
Q You have seen the winch?

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A I have seen the winch.
Q On the winch there is a control lever, correct?
A Yes.
Q And that control lever is spring loaded so if the guy just lets go, it pops back to neutral?
A Correct. I believe, based on Mr. Lima's testimony, too, that was off and out of gear and he had set the brake.
Q Do you know whether on the FISHING VESSEL MY WAY whether the winch will free spool if you let go of the winch control with the brake open, let go of the winch control with the hydraulic engaged, do you know whether it will free spool or not free spool?
A Not with the hydraulics engaged. If the clutch is engaged, it won't free spool.
Q The winch on the MY WAY, the power for the winch is provided by a hydraulic pump, correct?
A That's correct.
Q That hydraulic pump can be turned on or turned off, and the hydraulic power to the winch can either be turned on or off as the case may be, correct?
A Right.
Q There may be occasion when you just don't want to provide any power to the winch, is that correct?

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A That's correct. But the pump is still running.
Q Might be powering other types of equipment?
A Or recirculating the fluid.
Q If there is hydraulic power servicing the main winch on the FISHING VESSEL MY WAY and if the operator lets go of the hydraulic controls with the brake off, not engaged, will the, and if there is a load on the main winch, will the main winch move or free spool as we said?
A Yes.
Q Is that true whether the -- What do you base that on?
A My understanding of the operation of that winch, and that's why they have brakes to prevent it from dropping back into the sea. The brake prevents the winch from free spooling.
Q If the brake isn't working, then the load, in this case the door, will drop, correct?
A If the brake is defective and not holding, that's what can happen, yes, it will drop back into the sea when you stop the rewinding of the winch.
Q What if the hydraulic clutch is engaged and you put it in neutral, what would happen?
A It disengages the clutch. If the clutch is engaged

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and power is provided to the winch, then the winch is going to turn. If you disengage it to stop the winch from turning and set the brake to stop, to hold the load that you have on the winch head.
Q Does that control lever on the FISHING VESSEL MY WAY, is that a hydraulic lever or mechanical lever?
A It's a hydraulic lever on the control. It's a hydraulic control valve.
Q Is it kind of like a tractor or front loader?
A Similar. There is fluid flowing through the valve and it directs the fluid in one direction or another, and the brake is a brake band around the drum that stops the drum from turning.
Q But it's your testimony that when that hydraulic control lever that controls the hydraulic winch, when that is placed in the neutral position, that the winch on the MY WAY, main winch on the MY WAY can move free spool unless the brake is applied?
A Correct.
Q Have you ever tested that?
A On the MY WAY?
Q Yes.
A No, there was no reason to.
Q Is that true of every single commercial fishing

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vessel that you are aware of?
A In general terms, yes. There may be some updated winches that have safeties built in, but that is basically the mechanism of a winch. They have hydraulic power or it can be mechanical power, a chain drive around the winch. And when the chain stops and you disengage it, you have to set the brake to prevent it, if there is a load on the other end, from dropping back into the sea. The way you set the door is you disengage the brake, and the drum is free spooling while the weight is dropping to the bottom like a fishing reel.
Q You never tested it on the MY WAY?
A Oh, no. I had no reason to.
Q On the MY WAY, how would you use the clutch, then? You said there is a crutch that is sometimes a second control?
A The operating valve and the clutch are probably synchronized in one mechanism so when you engage the lever of the hydraulic control one direction or the other, the clutch engages and turns the spool like a fishing reel. If you engage the clutch on a fishing reel and wind it up, you are going to haul that load in. If you disengage it and have a fish on the end

of the fishing reel, it's going to drop back in.
Q Is it your testimony on the MY WAY it had an automatic clutch that engaged?
A I don't know if it was a separate mechanism for the clutch or all part of the same operating valve mechanism. I would have to study that and look at the blueprints.
Q But you have not done so, correct?
A I had no reason to.
Q It's your testimony that if I were to stand at the winch control valve and take the winch control lever, first of all take the brake and make it so it's loose, not braking the winch at all -- Do you understand that?
A Disengage the brake.
Q -- disengage the brake, now I take --
A And disengage the operating mechanism in the clutch?
Q Never even touch the operating mechanism, haul back with the control levers so I'm pulling in wire and take the control lever and put it to the neutral position--
A You are disengaging the operating mechanism when you do. The winch is no longer turning so you are disengaging the turning mechanism. It's either

forward, reverse or neutral. When it's neutral, it will free spool if there is a weight on the end of it or a load pulling it off the winch unless the brake is set.
Q So we're clear about your testimony I want to ask you, this is as I understand it: As I understand it that you believe that the way the winch on the main, the port side main winch on the FISHING VESSEL MY WAY works is that when you are hauling in a load, you would take the brake off so it is not applying any braking pressure; that you then turn the hydraulic valve so you are hauling in the main wire; the main wire is hauled in to the appropriate point at which point you take the hydraulic valve and place it in neutral and do nothing else; when you do that, on the FISHING VESSEL MY WAY, will the spool of wire rope free spool now?
A If there is a load pulling it off, it will.
Q And your opinion in this case is based partly upon that understanding of that winch?
A Very small part.
Q What's your understanding how much weight was in the bag at the time of Mr. Aguiar's accident?
A Exact amount of weight, I don't know.

Q A lot? A little? Was it -- Is it your understanding there was an excessive amount of weight in the bag at the time of his accident?
A Not excessive. A little more than average.
Q What is average on a fishing vessel?
A I don't know. Just basing on the testimony and what they said, a little bit heavier than other loads but not heavier than they have ever had, a little more than average.
Q What is an average bag on the MY WAY?
A Total weight, I don't know.
Q A thousand pounds?
A I don't know.
Q Five thousand pounds?
A I don't know without inquiring as to the amount of weight that they pull up on a -- Depends on several factors, where they are fishing, what kind of fish they are fishing for, the density of the fish.
Q What is your opinion of the sea conditions which were present at the time of Mr. Aguiar's accident? What's your opinion as to how far away from the rail the door swung, would be swinging given that sea state at the time of Mr. Aguiar's accident?
MR. REGAN: Objection. Go ahead.

A Far enough away to create a strain on the safety chain that he was placing on the chain on the door to cause the hook to open up before he had the stop ring placed over the hook.
Q Do you know the length of the safety chain?
A I don't know the exact length of the chain on that date and the distance away that he was trying to attach it. All I know it became taught and opened up.
Q Do you know whether the door would swing away from the vessel more than an inch?
A I'm assuming it's more than an inch.
Q Do you have an opinion as to whether it's more than an inch?
A Yes, it would be more than an inch.
Q Do you have an opinion as to whether it would be more than six inches?
A It could be six inches. My understanding is that he estimated that it appeared to move four to five inches.
Q And your opinions are that the door appeared to him to move four to five inches?
A Yes.
Q Where do you get that?

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